

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
AT&T Petition for Declaratory Ruling that	)	WC Docket No. 02-361
AT&T's Phone-to-Phone IP Telephony	)	
Services are Exempt from Access Charges	)	DA 02-3184

**REPLY COMMENTS  
of the  
ORGANIZATION FOR THE PROMOTION AND  
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

**I. Introduction**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in response to comments filed in the above captioned proceeding.<sup>1</sup> OPASTCO is a national trade association representing approximately 500 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37). A majority of OPASTCO members offer high-speed or advanced services, and over ninety percent provide dial-up Internet services.

OPASTCO's initial comments explained that an ILEC's costs do not decline in any way when providing access services for a phone-to-phone call using IP technology.

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<sup>1</sup> *Wireline Competition Bureau Seeks Comment on AT&T's Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, WC Docket No. 02-361, Public Notice, DA 02-3184 (rel. Nov. 18, 2002).

In addition, from the consumers' perspective, a phone-to-phone call using IP technology is no different than a traditional long distance call. Contrary to AT&T's claims, access rates are not above cost and inefficient, but are based on ILECs' costs of providing access services. Rural ILECs rely on, and have a right to receive, cost-based interstate access charges for their provision of access services, regardless of the type of technology used by a carrier to transport voice signals. These reply comments focus on the Commission's earlier determination that phone-to-phone IP telephony services are functionally equivalent to traditional telecommunications services.

**II. Commenters convincingly demonstrate that phone-to-phone IP telephony services are characteristic of, and incur the same costs as, telecommunications services, and therefore should be subject to interstate access charges**

Phone-to-phone calls using IP technology are functionally the same as traditional telecommunications services, and incur the same costs for ILECs. The clear majority of commenters agree that ILECs should be adequately compensated by interexchange carriers for the use of their facilities through cost-based access charges regardless of the technology a carrier may choose to use to transport a voice call.<sup>2</sup> Several commenters<sup>3</sup> noted that the Commission's 1998 Report to Congress<sup>4</sup> accurately determined that phone-

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<sup>2</sup> See, generally, Alaska Exchange Carriers Association, Inc. (Alaska Association); Beacon Telecommunications Advisors LLC; BellSouth Corp. (BellSouth); California RTCs; Fair Access Charge Rural Telephone Group; Frontier Telephone of Rochester, Inc.; Fred Williamson & Associates, Inc.; GVNW Consulting, Inc.; ICORE Companies; John Staurulakis, Inc. (JSI); Minnesota Independent Coalition; Missouri Small Telephone Company Group (MoSTCG); National Exchange Carrier Association; National Telecommunications Cooperative Association; New Hampshire Public Utilities Commission (NH PUC); New York State Department of Public Services; Qwest Communications International, Inc. (Qwest); Rural Iowa Independent Telephone Association; SBC Communications, Inc.; Sprint Corp.; TCA, Inc.; United States Telecom Association (USTA); Verizon; Warinner, Gesinger & Associates, LLC; Western Alliance.

<sup>3</sup> See, for example, Alaska Association, p. 4; MoSTCG, p. 4; SBC, p. 2; Qwest, pp. 5-6; USTA, p. 6.

<sup>4</sup> Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd, 11501 (1998) (1998 Report).

to-phone IP voice services bear the characteristics of a telecommunications service because it meets all four of the following criteria:

(1) [The service] holds itself out as providing voice telephony or facsimile transmission service; (2) it does not require the customer to use CPE different from that CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the public switched telephone network; (3) it allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan, and associated international agreements; and (4) it transmits customer information without net change in form or content.<sup>5</sup>

Further, the NH PUC points out that AT&T's position is not supported by the 1998 Report.<sup>6</sup> The 1998 Report states that use of IP technology does not affect the classification of phone-to-phone IP telephony "because it results in no net protocol conversion to the end user."<sup>7</sup> Additionally, the 1998 Report concluded:

A telecommunications service is a telecommunications service regardless of whether it is provided using wireline, wireless, cable, satellite, or some other infrastructure. Its classification depends rather on the nature of the service being offered to customers.<sup>8</sup>

A few commenters try to evade the fact that phone-to-phone IP telephony services function as telecommunications services by offering defenses of the exemption from interstate access charges currently enjoyed by providers of enhanced services.<sup>9</sup> However, these comments miss the point entirely, because as the Alaska Association and others point out, AT&T's petition never claims that phone-to-phone IP telephony services are information services.<sup>10</sup> In fact, AT&T's petition describes, without challenge, its

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<sup>5</sup> *Ibid.*, para. 88.

<sup>6</sup> NH PUC, p. 2.

<sup>7</sup> 1998 Report, para. 52.

<sup>8</sup> *Id.*, para. 59. *See also*, para. 86: "[T]he classification of a service under the 1996 Act depends on the functional nature of the end-user offering."

<sup>9</sup> *See, for example*, AISPA *et. al.*; Net2Phone, Inc.; VON Coalition; SouthEastern Services, Inc..

<sup>10</sup> Alaska Association, p. 3; *see also*, BellSouth p. 6; SBC, p. 2.

payment of originating access charges for its phone-to-phone IP telephony service.<sup>11</sup>

Since the Commission has recognized such services bear the characteristics of telecommunications services, AT&T does not even try to assert otherwise. Therefore, arguments in favor of applying the enhanced service exemption to phone-to-phone IP telephony services are simply inapplicable. Consequently, the Commission should deny AT&T's petition, and declare that interstate access charges, both originating and terminating, apply to phone-to-phone IP telephony services.

### **III. Conclusion**

Phone-to-phone IP telephony services indisputably bear the characteristics of telecommunications services. More importantly, the use of IP technology does not reduce ILECs' costs of originating or terminating these calls. The Commission's 1998 Report to Congress deferred "a more definitive resolution" of phone-to-phone IP issues "pending the development of a more fully-developed record."<sup>12</sup> Nearly five years after release of the 1998 Report, and after significant access charge reform, the record in this proceeding clearly provides the Commission with the information it needs to deny AT&T's petition and find that both originating and terminating access charges apply to phone-to-phone IP telephony services.

Respectfully submitted,

**THE ORGANIZATION FOR THE PROMOTION  
AND ADVANCEMENT OF SMALL**

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<sup>11</sup> AT&T Petition, p. 18; *see also*, JSI, p. 4.

<sup>12</sup> 1998 Report, para. 90.

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CERTIFICATE OF SERVICE

I, Stephen Pastorkovich, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, or via electronic mail on this, the 15th day of January, 2002, to those listed on the attached sheet.

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